

Good morning Mr. Chairman and members of the Committee. My name is HB 515
George Corn and I am the Ravalli County Attorney. I am here on behalf of
the Montana County Attorneys Association in opposition to HB 515.

In abuse and neglect cases the counties are responsible for representing the
DPHHS either by the county attorney handling them or by or by hiring a
private lawyer answerable to the county attorney. In most counties it is
done by the county attorney's office. (41-3- 422 (2))

I explain this so you will know that when county attorneys oppose this bill
our opposition comes from experience.

Here is a thumbnail sketch of the problems

1/ Additional cost— This bill adds costs to the state and to the counties
because it will keep these cases open longer. There was no fiscal note
attached to the bill. I have detailed the fiscal problems in a letter I send to
Mr. Ewer, Mr. Johnson and Mr. Schenck last week.

Essentially it says that these cases are already exceedingly complex with
each parent and each child getting their own attorney. This means multiple
parties and numerous attorney. The cases involve multiple proceeding.
They also require the involvement of many state employees such as social
workers, multiple professionals such as licensed psychologist, visitation
supervisors and in-home services all paid for by the State.

Adding another proceeding means more expense, more court time and more
cost for public defenders system and private attorneys who are hired as
conflict attorneys. Again, all paid for by the State.

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he cost to the counties comes from the additional time the county attorneys
office or the private attorney handling these cases for the office has to
spend on them. Another procedure simply adds to this unfunded mandate
imposed on the counties whose value to the state is already estimated at
approximately \$1,700,000 per year. (see Fiscal Note for HB 250-2007
legislature)

2/ loss of prosecutorial discretion/ potentially unconstitutional — The attorney general, the county attorney or an attorney hired by the county are the only parties authorized by law to bring these cases. See 441-3-422 (2). The bill essentially allows the judge on the motion of a party to keep these cases open for an indefinite time.

In all probability this bill is a violation of the Separation of Powers found in Article III, Section 1 one of the Montana Constitution which forbids persons of one branch of government from exercising powers property belong to other branches of government.

4/ bad public policy in general---

The bill lards another procedure on the area of law that already contains the highest number of mandatory hearings and deadlines of any in Montana law. These multiple safeguards already provide ample opportunity for all parties to be heard. This bill comes at the end of those proceeding. It also affords "special rights" to be paid for by the State that do not exist in any other are of law. Additionally there was no statewide demand for this bill, isolated instances in one or two counties does not justify legislation effecting the entire state. Finally, while it seems to assist a laudable group, CASA, among the unintended consequences is that it is much more likely to be used by abusive parents.

In closing let me point out we are very appreciate of CASA volunteers and the important work they do. However it is very unclear as to whether the membership in general is even aware of this issue or desires this change. I can report that I have had no calls about this from the CASA group in Ravalli County.

But irrespective of good motives this bill is flawed for the reasons I have stated above. The criticism of this bill are not theoretical, it comes from those people who work with these laws and with these on these cases on a day by day basis.

I urge you to vote against this bill. Thank you for attention.

Respectfully submitted,

George Corn
Ravalli County Attorney
3/23/09



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March 20, 2009

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RE: HB 515 – Fiscal Impact on State Budget

Gentlemen,

HB 515 will be heard in the Senate Judiciary Committee on March 24, 2009 at 8:00 a.m. This bill allows extension of DPHHS cases, on the motion of *any* party even after the State and County Attorney's offices have determined that all services have been provided and the case should be closed. The Montana County Attorney's Association (MCAA) is opposing the bill for a myriad of reasons; one of which I hope concerns you, is that the bill has no fiscal note. In fact, the bill will impact the state's budget by allowing already expensive abuse and neglect cases to continue for an extended length of time. This necessarily means more DPHHS involvement, monitoring, counseling and often foster care costs which would be paid by the State.

You should be aware that these cases are very expensive to keep open. Virtually all abuse and neglect cases handled by DPHHS are time-intensive. They involve State employees such as social workers, multiple professionals such as licensed psychologists, visitation supervisors, in-home services and the like--all paid for from the State's budget. In addition to this expense the bill will mean more involvement and cost to the courts and the public defender system, which also means more cost to the State. You should be aware that almost every parent and child gets an attorney (a public defender) at State expense in each DPHHS case.

You should also know that there has been absolutely no showing of need for the bill which creates "rights", to be paid for by the State, that do not exist in any other area of the law, civil or criminal. All of this will complicate the day-to-day operation of cases, meaning still more expense to the State

Mr. David Ewer, Director

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as parties will be able to leverage the new law to make additional demands on DPHHS (i.e., taxpayers).

Unfortunately the MCAA did not have the opportunity to vet this bill in the House. The hearing lasted 9 minutes with only the sponsor, one proponent and a DPHHS informational witness.

I bring this to your attention because of the unintended and unexamined impact this bill will have upon the State budget. I hope you will request a fiscal note.

Although not your direct concern, I also point out the bill will impact county budgets and the delivery of local services since counties, by state law, are responsible for representing the State in these cases either through the county attorney's office or by contracting with a private attorney.

If you wish to discuss this further with attorneys who work in this field daily, I will arrange for that immediately.

Thank you for your consideration of this matter.

Sincerely,

A handwritten signature in dark ink, appearing to read "George H. Corn". The signature is fluid and cursive, with the first name "George" being more prominent than the last name "Corn".

George H. Corn

GHC:hs

cc: Merle Raph, Toole County Attorney, President MCAA
Jim Smith/Kathy McGowan, Executive Directors, MCAA
Dennis Paxinos, County Attorney, Yellowstone County
Interested Parties